THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No. 2011 of 2001

Date of Decision: 01-11 -2006

State of Haryana and others **.....Appellants**

v.

G.R.Rawat **.....Respondent**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.Girish Agnihotri, Advocate
for the appellants.

Mr.R.C.Setia, Sr.Advocate with
Mr.Anish Setia, Advocate
for the respondent.

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P.S.PATWALIA, J.

The present regular second appeal has been filed by the defendants aggrieved against the judgment of the lower Appellate Court allowing the suit filed by the plaintiff after reversing the findings recorded by the trial Court whereby the suit filed by the plaintiff had been dismissed.

The substantial question of law raised by the appellants in this regular second appeal is as to whether the plaintiff can be permitted to shift from the EPF Scheme to the GPF Scheme in view of the fact that he had not applied to shift to the GPF Scheme prior to 7.1.1986? The relevant facts are recapitulated as hereunder:-

The plaintiff joined the service of the erstwhile Punjab State Electricity Board in 1956 and on re-organisation was allocated to the Haryana State Electricity Board (hereinafter to be referred as, `the Board'). The suit was filed by the plaintiff on 20.12.1991 while he was still in the service of the Board with a grievance that the defendants were wrongly deducting amounts from the

pay of the plaintiff towards Employees Provident Fund (EPF Scheme) and rather the deduction should have been made to the General Provident Fund (GPF Scheme). During the pendency of the suit the plaintiff retired on attaining the age of superannuation on 30.9.1996. He therefore claimed that whatever amount had been deducted towards EPF Scheme should be transferred and adjusted towards GPF Scheme along with interest and also prayed for consequential relief of mandatory injunction directing the defendants not to deduct any amount from the pay of the plaintiff towards EPF Scheme but rather to make deduction towards GPF Scheme. He had claimed in the suit that from 1967 onwards contribution for the GPF had been made compulsory for the employees of the Board and the plaintiff had made several representations to the defendants asking them not to deduct any amount towards EPF Scheme. Since the defendants had not paid any heed to the representations made by the plaintiff and had refused to admit the claim of the plaintiff, he had filed the present suit.

The respondent-Board contested the suit taking a plea that EPF was being deducted from the salary of the plaintiff and he had never agitated the matter from 1968 till the filing of the present suit. Hence, dismissal of the suit was prayed for.

The lower Appellate Court on an examination of the pleadings of the parties and the evidence led found that in the year 1967 GPF Scheme had been made applicable to the regular employees of the Board. Thereafter a letter was written by the Regional Provident Fund Commissioner to the Board asking it to deduct EPF from the salary of its employees and send the same to it. The Board then filed Civil Writ Petition No.1500 of 1981 challenging the action of the authorities under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter to be referred as `the Act') directing that the employees of the Board should be made liable for EPF. The writ petition was decided on 20.12.1982 by a Division Bench of this Court. The Board had contended in that

writ petition that except for the Thermal Power Houses or Grid Stations and Sub Stations where electricity is either generated or subjected to a technical process, no other establishment of the Board would be covered under the Act. This contention of the Board was accepted by a Division Bench of this Court and resultantly the writ petition was allowed on September 20, 1982 with the following directions:-

> 12) As a result of the above discussion, we hold and direct that:
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> (a) out of the six categories of establishments of the petitioner-Board enumerated in the earlier part of the judgment, the respondents are entitled to cover, for the purpose of Provident Fund, only the Thermal Power Houses including Grid Stations and Sub-Stations where electricity is either generated or is subjected to such technical process/s by which the same is made suitable for transmission and distribution to the consumers; and
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> (b) the provisions of the Act shall not be made applicable to the remaining categories of establishments of the Board which are connected with the operation, construction etc., as no manufacturing process is carried out in these establishments. The impugned order passed by respondent No.2 on January 21, 1981 (Copy Annexure P-7) is quashed to this extent.
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> 13) The Writ Petition is disposed of accordingly. In the circumstances of the case, there shall be no order as to costs of the same."

Still further the lower Appellate Court noted that the matter regarding switching over from the EPF Scheme to GPF and Pensionary Benefit Scheme was considered in the meeting and in the meeting of the Board held on 31.12.1987 it was decided as hereunder:-

"(i) The employees who have been granted exemption prior to 7.1.86 (the date on which the Board decided that no further exemption from employees provident fund to general provident fund and pensionary benefits scheme be recommended with the approval of the Secretary/Board), be allowed pensionary benefits from employees Provident Fund to General provident fund and pensionary benefits scheme.

(ii) All the employees who were covered under employees provident fund scheme and were granted exemption, should refund the board's contribution alongwith interest thereon and it should be ensured that exempted employees do not get away with both the benefits. In case, refund of Board's contribution and interest thereon from the exempted employees is not completely refunded in lumpsum by exempted employees, who got exemption from employees Provident Fund Authorities, the pension be got stopped with immediate effect till Board's contribution alongwith interest is deposited with the Board. Chief Accounts Officer will calculate in consultation with the field Executive Engineers or drawing and disbursing Officer to ensure that Board's full contribution alongwith interest thereon, is received back and deposited to the Board in lumpsum.

(iii) The pensionary benefits may be allowed with effect from the date of appointment as per decision taken in the case of Sh.JN Kapoor, Divisional Accountant (Retired)."

It was the stand of the Board that since no representation had been received from the plaintiff prior to 7.1.1986, hence his claim for switching over from EPF Scheme to GPF Scheme could not be allowed.

Still further while examining the documents exhibited on the record, the lower Appellate Court had noted that a letter was written by the Executive Engineer, H.S.E.B. Shahbad to the Superintending Engineer at Kurukshetra on 12.5.1986 (Ex.PW4/1) enclosing a representation made by the plaintiff for switching over from EPF Scheme to GPF Scheme. It was stated in the said letter that the original representation submitted by the plaintiff was enclosed for onward transmission to the concerned quarters. The said representation was then forwarded by the Superintending Engineer (Operation Circle), H.S.E.B. Kurukshetra to the Secretary of the Board vide his letter dated 30.5.1986 (Ex.PW4/2). Still further the lower Appellate Court has also referred to letter dated 12.7.1993 (Ex.P7) written by the Chief Accounts Officer, Panchkula to all the Chief Engineers, Superintending Engineers and Executive Engineers wherein it was mentioned that the matter regarding conversion of willing employees from the EPF to GPF Scheme was considered by the Board and had also come up for discussion with the Workers' Unions of the Board. In order to examine the issue it was necessary to have the details of all such EPF contributors and their dates of superannuation. The said letter requested the officers to send the information on a proforma which was enclosed therewith.

Apart from this the lower Appellate Court has also referred to a certified copy of Civil Writ Petition No.4174 of 1994 (Ex.P9), written statement filed by the Board (Ex.P10) and order dated 21.1.1986 passed by this Court in the said writ petition. A reading of the averments made in the writ petition would show that Munshi Ram and Ram Lal petitioners therein had claimed that they had joined as Trade Mates in the year 1952. They were regularly appointed as Assistant Lineman in the then Punjab State Electricity Board under the Government of composite Punjab and on re-organisation they were allocated to the Haryana State Electricity Board. They had retired on attaining the age of superannuation in December, 1990 and December, 1992 respectively. It was their

claim that in spite of the fact that they had never opted for the EPF Scheme, they were made members of the aforesaid scheme. They had represented that their contribution should be converted into GPF Scheme and they should be granted pensionary benefits under the GPF Scheme. The writ petition came up for hearing on 23.1.1996 when the following order was passed:-

> "Present: Mr.S.P.S.Chauhan, Advocate.
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> Mr.SK Kapur, AAG (H).
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> Learned counsel appearing for the respondents submits that the relief of pensionary benefits, as prayed for, shall be granted to the petitioners within a period of two months from today. Learned counsel for the petitioners is satisfied. The writ petition stands disposed of in terms of statement made by learned counsel for the respondents."

On the basis of the said order, they were granted the benefit of GPF Scheme and pensionary benefits under the same.

The lower Appellate Court held that there was no justification for the Board to fix a cut off date as 7.1.1986 and the cut off date as fixed was arbitrary. It was further found that the plaintiff had made a representation for shifting from EPF Scheme to GPF Scheme on 12.5.1986 which is clear from the letter of the Executive Engineer of the Board Ex.PW4/1. The plaintiff was therefore held entitled for the relief claimed on the aforementioned facts as also on the ground that identical relief had been conceded by the Board in the case of certain similarly situated petitioners in Civil Writ Petition No.4174 of 1994. The relevant observations of the lower Appellate Court allowing the claim of the plaintiff are as hereunder:-

> "15. In my opinion, in the meeting held on 31.12.1987, the Board could not arbitrarily held that only the employees who were granted exemption prior to 7.1.1986 be allowed pensionary benefits from

E.P.F. to G.P.F. Scheme. I am of the view that in view of the facts of this case, where the plaintiff had definitely made the representation for shifting from E.P.F. Scheme to G.P.F. And pensionary benefits scheme on 12.5.1986, and in view of the fact that the prayer made by the similarly circumstanced petitioners was conceded by the H.S.E.B. In C.W.P.No.4174 of 1994, I hold that the present plaintiff was also entitled for his shifting from E.P.F. Scheme to G.P.F. And pensionary benefits scheme provided, the contribution made by the H.S.E.B. Towards his E.P.F. Account and the interest, which had accrued thereon were returned by the plaintiff to the H.S.E.B. In lumpsum, alongwith interest at the rate of 12% per annum from the date the above amount was received by the plaintiff till the date of its return to the H.S.E.B. within a period of two months from today. It may be mentioned that the plaintiff shall not be entitled to any interest on the pensionary benefits.

16. In view of the above discussion, I set aside the impugned judgment and decree passed by the trial Court, decree the suit of the plaintiff, as mentioned in para no.15 of this judgment and accept the present appeal accordingly, leaving the parties to bear their own costs throughout."

It is against the aforementioned judgment decreeing the suit of the plaintiff that the present appeal has been filed by the defendants.

I have heard Mr.Girish Agnihotri, learned counsel appearing for the appellants and Mr.R.C.Setia, learned senior counsel with Mr.Anish Setia for the respondent-plaintiff and have gone through the paperbook as also the record of the lower Court.

Mr.Girish Agnihotri has primarily argued that the plaintiff was not entitled to the relief of switching over from the EPF Scheme to the GPF Scheme as

he had not applied for the same prior to 7.1.1986 which was the cut off date prescribed by the Board in the meeting held on 31.12.1987. This was all the more so since according to the learned counsel both the EPF Scheme as also the GPF Scheme were running concurrently. Learned counsel has then placed firm reliance on a Division Bench judgment of this Court in **Executive Engineer, Haryana State Electricity Board v. Dharam Singh and others**, 2005(3) SLR 732 and argued that the case of the appellants is completely covered by the ratio of the law laid down in the aforementioned judgment. On the other hand, Mr.Setia, learned senior counsel appearing for the respondent submits that once a Division Bench of this Court had held in Civil Writ Petition No.1500 of 1981 that the provisions of the Act would not apply to the Haryana State Electricity Board except to the employees working in the Thermal Power Houses including Grid Stations and Sub Stations there was no occasion for the employees working in other establishments of the Board to apply for any exemption. He contends that once the provisions of the Act itself do not apply, the EPF Scheme could not be enforced qua the regular employees of these establishments as the said scheme applies only to those establishments where the Act applies. Thus, the learned counsel submits that for regular employees working in the establishment of the Board other than the Thermal Power Houses, it is only the GPF Scheme which was the valid scheme and therefore the employees would have to be covered by the said scheme. Thus, he submits that it would make no difference whether or not the exemption was applied for by the plaintiff prior to 1.7.1986. He further submits that the lower Appellate Court has rightly allowed the relief to the plaintiff also on the ground that the plaintiff's case is identical to that of the petitioners in Civil Writ Petition No.4174 of 1994 whose claim was conceded by the Board. The Board therefore cannot adopt two different yardsticks for identically situated employees. Still further while referring to the judgment in **Dharam Singh's case (supra)**, Mr.Setia submits that the Board therein had conceded that those employees who exercised

option upto 1988 would be allowed to switch over from EPF Scheme to GPF Scheme. This was so stated by the Board in an additional affidavit filed by appellants on a specific query raised by the Division Bench. This is apparent from a reading of paras 7 and 8 of the said judgment which are as hereunder:-

> "7. We have heard learned counsel representing the parties and with their assistance examined the records of this case. At one stage, when the matter came up for hearing before us on 5.8.2004 and when it was urged before us on behalf of the appellant that instructions, Annexure P-2, relief upon by learned Single Judge pertained to work-charge employees, we directed the appellant to file an affidavit, giving information on the following points:-
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> > "1. Whether Annexure P-2 pertains only to work-charge employees or the same also applies to regular employees?
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> > 2. Whether the second paragraph 3 at page 52 of the paper book pertains to the work-charge employees who have already retired?
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> > 3. Whether the benefit as given to the work-charge employees vide Annexure P-2, by separate order was given to regular employees in position or retired as well?
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> > 4. Whether the relief that has been granted to the petitioner by the learned Single Judge was granted by the appellants to the similarly situated persons like the petitioner.?"
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> 8. Additional affidavit, pursuant to the order, referred to above, dated 19.8.2004 has been filed, wherein, it has, inter alia, been pleaded that the petitioner was appointed by Punjab Public Works

Department as A.L.M. On 8.6.1957 and after re-organisation, his services were allocated to HSEB. He was a member of Contributory Provident Fund when he joined in Punjab Public Works Department and thereafter in PSEB. While in PSEB, an opportunity was given to all the members of Contributory Provident Fund Scheme to opt for Pensionary Scheme upto 30.9.1965 but he chose to remain silent. He came in HSEB as a regular employee and as per the provisions contained in Civil Services Rules, option once exercised is final. However, there are instances in HSEB, wherein, regular employees being members of EPF were allowed to switch over from EPF to GPF. This practice continued upto the year 1988. The petitioner did not give any option to switch over under any of the instructions issued since 1966 till 1988. However, on reconsideration of the matter, the Board issued instructions that no further switch over from EPF to GPF would be allowed. These instructions were subject-matter of litigation in the High Court in the case filed by Rishal Singh and others wherein, sanctity of these instructions was upheld. Insofar as, instructions dated 6.8.1993 are concerned, there relate to those employees, whose work-charge service was followed by regularisation. These instructions were issued when Rule 3.1/A of Punjab C.S.R. Vol.II was struck down by Full Bench of this Court in Kesar Chand's case. The factual position, in pursuance of the instructions dated 6.8.1993, is that those, who had opted pensionary benefits within the stipulated period, they were allowed this benefit. Pensionary benefits were admissible to those employees, who were initially appointed as work-charge and this work-charge service was followed by regularisation. The benefit was extended to those, who were in service vide letter dated 12.1.1993 and also to retirees vide

> instructions dated 6.8.1993. It is then pleaded that the petitioner cannot take benefit of Annexure P-1. After 1988, no decision/circular was issued allowing switch over from EPF to GPF to regular employees. Benefit of instructions was applicable to those employees, who were appointed as work-charge and thereafter were made regular and also subject to the rider that they had exercised their option within the stipulated period. Benefit of instructions was not applicable/available to those employees, who joined as regular and contained as regular employees till retirement. Regular employees were governed by Rule 1.1(a) of Punjab C.S.R. Vol.I, Part I, wherein, it is stipulated that option once exercised was final. In the additional affidavit, Rule 14.30 of Punjab CSR Volume II Chapter 14 has also been quoted. It is pleaded that no person similarly situated as the petitioner (those who have initially appointed on regular basis, did not exercise any option till 1988 and retired after 1988) has been given the benefit of pensionary benefits."

He also submits that the Board misled the Division Bench in the aforementioned judgment by stating that the petitioners in Civil Writ Petition No.4174 of 1994 were claiming the benefit of work charge service and it is on that basis that the Division Bench has ignored the decision in that case. This is clear from the following observations appearing in paras 14 and 15 of the said judgment:-

> ".....In our considered view, no reliance can be placed upon the judgment of this Court rendered in CWP No.4174 of 1994, Annexure P-5 either. The short order recorded in the writ petition aforesaid on 23.1.1996 reads thus:-
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> > "Learned counsel appearing for the respondents submits that the relief of pensionary benefits, as prayed for shall be granted to the petitioners within a period of two

months from today. Learned counsel for the petitioners is satisfied. The writ petition stands disposed of in terms of statement made by learned counsel for the respondents.

> ".....the aforesaid judgment pertains to work-charge employees only and there is no reply forthcoming from the counsel representing the petitioner. The fact that judgment, Annexure P-5, pertains to work-charge employees is not in dispute at this stage. It is pertinent to mention that the pleadings made in the writ petition with regard to CWP No.4174 of 1994 in paragraph 15 are only to the effect that the same pertain to retired employees of HSEB. In reply to the said paragraph, it has been averred that the contents of para 15 of the writ petition are wrong and hence denied as the petitioner has failed to attach full extract of the judgment alongwith the writ petition supplied to the respondents. Otherwise also, the case referred to in this para is not to the knowledge of the answering respondent. Had the petitioner made full reference of that case in the para, the same would have been suitably replied. ...."

He therefore submits that the judgment in Civil Writ Petition No.4174 of 1994 has been distinguished by the Division Bench only on the ground that the facts of that case were not correctly projected before the Division Bench and the Division Bench was misled into believing that the petitioners in that case were wanting the benefit of their work charge service and were claiming transfer from EPF Scheme to GPF Scheme on that basis.

After hearing learned counsel for the parties and going through the record I find no merit in this regular second appeal. The argument raised by learned counsel for the appellants that since the plaintiff had not applied for switching over from the EPF to GPF Scheme prior to 7.1.1986, hence he was not entitled to the aforesaid benefit cannot be accepted for more than one reasons:-

Firstly a reading of the facts as recapitulated hereinabove would show that a Division Bench of this Court in judgment dated 20.12.1982 rendered in Civil Writ Petition No.1500 of 1981 has held that the provisions of the Act would not be applicable to the employees of the Board except those working in the Thermal Power Houses including Grid Stations and Sub Stations where electricity is either generated or is subjected to a technical process making it suitable for transmission and distribution to the consumers. Once the provisions of the Act itself are not applicable, there is no occasion for an employee working in that part of the Board where the Act does not apply to seek an exemption from the Act. Once a Division Bench has taken the view that the Act will not apply then the EPF Scheme which is a scheme under the Act also cannot apply. All such employees would therefore necessarily have to be shifted to the GPF Scheme. Therefore even if it is presumed that the plaintiff had not given the option prior to 7.1.1986 since the EPF Scheme itself was not applicable to him, he would have to be covered under the GPF Scheme.

Secondly a reading of the judgment of the Division Bench in **Dharam Singh's case (supra)** would show that the Board on being directed by a learned Single Judge of this Court had filed an affidavit in this Court stating therein that regular employees who were members of the EPF Scheme were allowed to switch over to the GPF Scheme from 1966 upto 1988. It has been found by the lower Appellate Court that the plaintiff in the present case had given his option in May, 1986 which was forwarded by the Executive Engineer, H.S.E.B. Shahbad to the Superintending Engineer at Kurukshetra vide Ex.PW4/1. Thus, in terms of the affidavit filed in **Dharam Singh's case (supra)** also the plaintiff in the present case should have been permitted to switch over to the GPF Scheme.

Thirdly the facts of the present case are similar to those of Civil Writ Petition No.4174 of 1994. The petitioners in the aforementioned writ petition Munshi Ram and Ram Lal had also claimed that they should be allowed to switch

over from EPF to GPF Scheme. In their case the counsel appearing for the Board made a statement in January, 1986 that the relief shall be granted to them. The case of the plaintiff in the present case is also similar. In fact the Board misled the Division Bench deciding **Dharam Singh's case (supra)** by stating that the petitioners in the aforementioned writ petition were claiming the benefit of work charge service. I have gone through Civil Writ Petition No.4174 of 1994. No such claim had been made by the petitioners therein. Therefore, the plaintiff in the present suit being identically situated with the petitioners in Civil Writ Petition No.4174 of 1994 was also entitled to be permitted to switch over to the GPF Scheme.

For the aforementioned reasons, the contention raised by Mr.Agnihotri that the plaintiff cannot be permitted to shift to GPF Scheme is liable to be rejected. The question of law as framed in the opening of the judgment is thus answered against the appellants.

In so far as the reliance placed by Mr.Agnihotri on the Division Bench judgment in **Dharam Singh's case (supra)** is concerned, I am of the opinion that in fact the claim of the plaintiff in the present case is covered by the affidavit filed by the Board itself in **Dharam Singh's case** wherein it was stated that those employees who had given applications upto 1988 were permitted to switch over to GPF Scheme. Still further the Board had wrongly projected before the Division Bench in **Dharam Singh's case (supra)** that the petitioners in Civil Writ Petition No.4174 of 1994 were claiming the benefit of work charge service. On the aforesaid two reasons I am of the opinion that the claim of the plaintiff cannot be denied on the basis of aforementioned judgment.

For the reasons aforementioned, the present regular second appeal is dismissed. The plaintiff is entitled to pensionary benefits under the GPF Scheme subject to the conditions recorded in para 15 of the judgment of the lower Appellate Court. The plaintiff shall deposit the amount received by him under the

EPF Scheme along with 12% interest within a period of two months from the date of receipt of certified copy of this judgment if the same has not already been deposited by him.

(P.S.PATWALIA)

November 01, 2006. **JUDGE**

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